

§ 114.108

award, compromise, or settlement of a claim in excess of \$25,000. For this purpose, a principal claim and any derivative or subrogated claim are considered a single claim.

(b) SBA must consult with the Department of Justice before adjusting, determining, compromising, or settling a claim whenever the General Counsel or designee determines:

(1) The claim involves a new precedent or a new point of law; or

(2) The claim involves or may involve a question of policy; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and SBA is unable to adjust the third party claim; or

(4) Approval of a claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed \$25,000.

(c) SBA must consult with the Department of Justice before adjusting, determining, compromising, or settling a claim whenever SBA learns that the United States, or any of its employees, agents, or cost-plus contractors, is involved in litigation based on a claim arising out of the same incident or transaction.

(d) SBA, acting through its General Counsel or designee, must make any referrals to the Department of Justice for approval or consultation by transmitting them in writing to the Assistant Attorney General, Civil Division.

(1) The referral must contain a short and concise statement of the facts and the reason for the request or referral, copies of the relevant portions of the claim file, and SBA's views and recommendations.

(2) SBA may make this referral at any time after a claim is presented.

§ 114.108 What if my claim is approved?

SBA will notify you in writing if it approves your claim. The District Counsel or Disaster Area Counsel investigating your claim will forward to you, your agent or legal representative the forms necessary to indicate satisfaction of your claim and your acceptance of the payment. Acceptance by you, your agent or your legal representative of any award, compromise or settlement releases all your claims

13 CFR Ch. I (1–1–10 Edition)

against the United States under the Federal Tort Claims Act. This means that it binds you, your agent or your legal representative, and any other person on whose behalf or for whose benefit the claim was presented. It also constitutes a complete release of your claim against the United States and its employees. If you are represented by counsel, SBA will designate you and your counsel as joint payees and will deliver the check to counsel. Payment is contingent upon the waiver of your claim and is subject to the availability of appropriated funds.

[64 FR 40283, July 26, 1999]

§ 114.109 What if my claim is denied?

SBA will notify you or your agent or legal representative in writing by certified or registered mail if it denies your claim. You have a right to file suit in an appropriate U.S. District Court not later than six months after the date the notification was mailed.

Subpart B—Representation and Indemnification of SBA Employees

§ 114.110 What is SBA's policy with respect to indemnifying and providing legal representation to SBA employees?

(a) If an SBA employee engages in conduct, within the scope of his or her employment, which gives rise to a claim, and the SBA Administrator or designee determines that any of the following actions relating to the claim are in SBA's interest, SBA may:

(1) Indemnify the employee after a verdict, judgment, or other monetary award is rendered personally against the employee in any civil suit in state or federal court or any arbitration proceeding;

(2) Settle or compromise the claim; and/or

(3) Pay for, or request that the Department of Justice provide, legal representation to the employee once personally named in such a suit.

(b) If you are an SBA employee, you may ask SBA to settle or compromise your claim, provide you with legal representation, or provide you with indemnification for a verdict, judgment or award entered against you in a suit. To do so, you must submit a timely,

Small Business Administration

§ 115.1

written request to the General Counsel, with appropriate documentation, including copies of any pleadings, verdict, judgment, award, or settlement proposal. The General Counsel will decide all requests for representation or settlement, and will forward to the Administrator, with the accompanying documentation and a recommendation, any requests for indemnification.

(c) Any payments by SBA under this section will be contingent upon the availability of appropriated funds.

§ 114.111 Does the attorney-client privilege apply when SBA employees are represented by the Government?

When attorneys employed by SBA participate in any process in which SBA seeks to determine whether SBA should request the Department of Justice to provide representation to an SBA employee sued, subpoenaed, or charged in his or her individual capacity, or whether attorneys employed by SBA should provide representational assistance for such an employee, those attorneys undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. If representation is authorized, SBA attorneys who assist in the representation of an SBA employee also undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. Unless authorized by the employee, the attorney must not disclose to anyone other than attorneys also responsible for the employee's representation information communicated to the attorney by the client-employee during the course of the attorney-client relationship. The attorney-client privilege will continue with respect to that information whether or not representation is provided, and even if the employee's representation is denied or discontinued.

PART 115—SURETY BOND GUARANTEE

Sec.

- 115.1 Overview of regulations.
- 115.2 Savings clause.

Subpart A—Provisions for All Surety Bond Guarantees

- 115.10 Definitions.
- 115.11 Applying to participate in the Surety Bond Guarantee Program.
- 115.12 General program policies and provisions.
- 115.13 Eligibility of Principal.
- 115.14 Loss of Principal's eligibility for future assistance.
- 115.15 Underwriting and servicing standards.
- 115.16 Determination of Surety's Loss.
- 115.17 Minimization of Surety's Loss.
- 115.18 Refusal to issue further guarantees; suspension and termination of PSB status.
- 115.19 Denial of liability.
- 115.20 Insolvency of Surety.
- 115.21 Audits and investigations.

Subpart B—Guarantees Subject to Prior Approval

- 115.30 Submission of Surety's guarantee application.
- 115.31 Guarantee percentage.
- 115.32 Fees and Premiums.
- 115.33 Surety bonding line.
- 115.34 Minimization of Surety's Loss.
- 115.35 Claims for reimbursement of Losses.
- 115.36 Indemnity settlements and reinstatement of Principal.

Subpart C—Preferred Surety Bond (PSB) Guarantees

- 115.60 Selection and admission of PSB Sureties.
- 115.61 [Reserved]
- 115.62 Prohibition on participation in Prior Approval program.
- 115.63 Allotment of guarantee authority.
- 115.64 Timeliness requirement.
- 115.65 General PSB procedures.
- 115.66 Fees.
- 115.67 Changes in Contract or bond amount.
- 115.68 Guarantee percentage.
- 115.69 Imminent Breach.
- 115.70 Claims for reimbursement of Losses.
- 115.71 Denial of liability.

AUTHORITY: 5 U.S.C. app. 3, 15 U.S.C. 687b, 687c, 694a, 694b, 694b note, Pub. L. 106-554; and Pub. L. 108-447, Div. K, Sec. 203.

SOURCE: 61 FR 3271, Jan. 31, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 115 appear at 72 FR 50038, Aug. 30, 2007.

§ 115.1 Overview of regulations.

The regulations in this part cover the SBA's Surety Bond Guarantee Programs under Part B of Title IV of the Small Business Investment Act of 1958,